BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2003-326-C

IN RE:

Analysis of Continued Availability of Unbundled)
Local Switching for Mass Market Customers)
Pursuant to the Federal Communications)
Commission's Triennial Review Order)
_____)

AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC., AT&T COMMUNICATIONS, INC., AND AT&T COMMUNICATIONS OF THE SOUTHERN STATES, LLC OBJECTIONS TO BELLSOUTH TELECOMMUNICATIONS, INC.'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS [Nos. 1-21]

AT&T Communications of the Southern States, Inc., AT&T Communications, Inc. and AT&T Communications of the Southern States, LLC, pursuant to Rules 26 and 34 of the South Carolina Rules of Civil Procedure, and Rules 103-851 and 103-854 of the Rules and Regulations of the Public Service Commission of South Carolina (hereinafter "Commission"), object generally and specifically to BellSouth Telecommunications, Inc.'s (hereinafter "BellSouth") First Requests for Production of Documents, served on November 18, 2003, as described below.

OVERVIEW

AT&T Communications of the Southern States, Inc. and AT&T Communications, Inc. are not parties to this proceeding and are not certificated carriers in South Carolina. Accordingly, these parties object to any discovery served on them in this proceeding. Subject to the foregoing, responses will be provided on behalf of AT&T Communications of the Southern States, LLC (hereinafter "AT&T").

AT&T files these objections for purposes of complying with the ten (10) day requirement contained in the Proposed Initial Procedural Order (the "*Proposed Procedural Order*") submitted by CompSouth and BellSouth to the Commission. These objections are preliminary in nature. Should additional grounds for objection be discovered as AT&T prepares its responses to any discovery, or at any time prior to hearing, AT&T reserves the

right to supplement, revise, and/or modify these objections.

GENERAL OBJECTIONS

AT&T makes the following general objections to the Requests which will be incorporated by reference into AT&T's specific responses when AT&T responds to the Requests.

1. Definitions

A. AT&T objects to the lengthy "Definitions" section of BellSouth's First Requests for Production of Documents to AT&T to the extent that such terms are overly broad, unduly burdensome, irrelevant, oppressive and not reasonably calculated to lead to the discovery of admissible evidence. Furthermore, AT&T objects to the "Definitions" section to the extent that it utilizes terms that are subject to multiple interpretations, but are not properly defined or explained for purposes of these Requests.

B. AT&T objects to the "Definitions" section of BellSouth's First Requests for Production of Documents to AT&T to the extent that the definitions operate to include the discovery of information protected by attorney/client privilege, the work product doctrine or any other applicable privilege.

C. AT&T objects to the "Definitions" section of BellSouth's First Requests for Production of Documents to AT&T to the extent that the definitions operate to include the discovery of information and/or materials containing the mental impressions, conclusions, opinions or legal theories of any attorney or other representative of AT&T concerning the subject of the proceeding and prepared and developed in anticipation of litigation pursuant to Rule 26(b)(3) without the requisite showing that BellSouth has substantial need of the materials and/or information in the preparation of its case and that BellSouth is unable without undue hardship to obtain the substantial equivalent of the information and/or materials by other means.

D. AT&T objects to the "Definitions" section of BellSouth's First Requests for Production of Documents to AT&T to the extent that the definitions operate to impose discovery obligations on AT&T inconsistent with, or beyond the scope of, what is permitted under the *Proposed Procedural Order*, the Rules and Regulations of the Public Service Commission of South Carolina, and Rules 26 and 34 of the South Carolina Rules of Civil Procedure.

E. AT&T objects to the "Definitions" section of BellSouth's First Requests for Production of Documents to AT&T to the extent that the definitions operate to seek discovery of matters other than those subject to the jurisdiction of the Commission pursuant to the Federal Communications Commission's (hereinafter "FCC") Triennial Review Order and other applicable South Carolina law.

F. AT&T objects to the "Definitions" section of BellSouth's First Requests for

Production of Documents to AT&T to the extent that the Requests purport to seek disclosure of information that is proprietary confidential information or a "trade secret" without the issuance of an appropriate Protective Order pursuant to South Carolina law.

G. AT&T objects to the definitions of "you," "your," "AT&T," and "person" to the extent that the definitions include natural persons or entities which are not parties to this proceeding, not subject to the jurisdiction of the Commission, and not subject to the applicable discovery rules. Subject to the foregoing, and without waiving any objection, general or specific, unless otherwise ordered, responses will be provided only on behalf of AT&T Communications of the Southern States, LLC, which is a certificated carrier authorized to provide regulated communications services in South Carolina and which is a party to this proceeding.

2. Instructions

A. AT&T objects to the "General Instructions" section of BellSouth's First Requests for Production of Documents to AT&T to the extent that the "instructions" operate to impose discovery obligations on AT&T inconsistent with, or beyond the scope of, what is permitted under the *Proposed Procedural Order*, the Rules and Regulations of the Public Service Commission of South Carolina, and Rules 26 and 34 of the South Carolina Rules of Civil Procedure.

B. AT&T objects to the "General Instructions" section of BellSouth's First Requests for Production of Documents to AT&T to the extent that the "instructions" operate to seek disclosure of the mental impressions, conclusions, opinions, or legal theories of any attorney or other representative of AT&T concerning the subject of litigation without the requisite showing under Rule 26(b)(3) of the South Carolina Rules of Civil Procedure.

C. AT&T objects to the "General Instructions" section of BellSouth's First Requests for Production of Documents to AT&T to the extent that the "instructions" operate to seek disclosure of "all" information in AT&T's "possession, custody or control" and to the extent that said "instruction" requires AT&T to provide information or materials beyond its present knowledge, recollection or possession. With respect thereto, AT&T has employees located in many different locations in South Carolina and other states. In the course of conducting business on a nationwide basis, AT&T creates numerous documents that are not subject to either the Commission or FCC record retention requirements. These documents are kept in numerous locations and frequently are moved from location to location as employees change jobs or as business objectives change. Therefore, it is impossible for AT&T to affirm that every responsive document in existence has been provided in response to all Requests. Instead, where provided, AT&T's responses will provide all information obtained by AT&T after a reasonable and diligent search conducted in connection with those Requests. Such search will include only a review of those files that are reasonably expected to contain the requested information. To the extent that the "instructions" require more, AT&T objects on the grounds that compliance would be unduly burdensome, expensive, oppressive, or excessively time consuming to provide such responsive information.

3. General Objections to Requests

A. AT&T objects to BellSouth's First Requests for Production of Documents to AT&T to the extent that the Requests are overly broad, unduly burdensome, irrelevant, oppressive and not reasonably calculated to lead to the discovery of admissible evidence pursuant to the *Proposed Procedural Order*, the Rules and Regulations of the Public Service Commission of South Carolina, and Rules 26 and 34 of the South Carolina Rules of Civil Procedure.

B. AT&T objects to BellSouth's First Requests for Production of Documents to AT&T to the extent that the Requests purport to seek discovery of information protected by attorney/client privilege, the work product doctrine or any other applicable privilege.

C. AT&T objects to BellSouth's First Requests for Production of Documents to AT&T to the extent that the Requests purport to seek discovery of information and/or materials containing the mental impressions, conclusions, opinions or legal theories of any attorney or other representative of AT&T concerning the subject of the proceeding and prepared and developed in anticipation of litigation pursuant to Rule 26(b)(3) without the requisite showing that BellSouth has substantial need of the materials and/or information in the preparation of its case and that BellSouth is unable without undue hardship to obtain the substantial equivalent of the information and/or materials by other means.

D. AT&T objects to BellSouth's First Requests for Production of Documents to AT&T to the extent that the Requests purport to impose discovery obligations on AT&T inconsistent with, or beyond the scope of, what is permitted under the *Proposed Procedural Order*, the Rules and Regulations of the Public Service Commission of South Carolina, and Rules 26 and 34 of the South Carolina Rules of Civil Procedure.

E. AT&T objects to BellSouth's First Requests for Production of Documents to AT&T to the extent that the Requests purport to seek discovery of matters other than those subject to the jurisdiction of the Commission pursuant to the FCC's Triennial Review Order and other applicable South Carolina law.

F. AT&T objects to BellSouth's First Requests for Production of Documents to AT&T to the extent that the Requests purport to seek disclosure of information that is proprietary confidential information or a "trade secret" without the issuance of an appropriate Protective Order pursuant to South Carolina law.

G. AT&T objects to all Requests which require the disclosure of information which already is in the public domain or otherwise on record with the Commission or the FCC.

H. AT&T objects to BellSouth's First Requests for Production of Documents to AT&T to the extent that the Requests seek information and discovery of facts known and opinions held by experts acquired and/or developed in anticipation of litigation or for hearing and outside the scope of discoverable information pursuant to the *Proposed Procedural*

Order, the Rules and Regulations of the Public Service Commission of South Carolina, and Rules 26 and 34 of the South Carolina Rules of Civil Procedure.

I. Pursuant to the *Proposed Procedural Order*, the Triennial Review Order, and applicable South Carolina law, to the extent that BellSouth's Requests request specific financial, business or proprietary information regarding AT&T's economic business model, AT&T objects to providing or producing any such information on the grounds that those requests presume that the market entry analysis is contingent upon AT&T's economic business model instead of the hypothetical business model contemplated by the Triennial Review Order.

SPECIFIC OBJECTIONS TO REQUESTS FOR PRODUCTION

POD 1: Produce all documents identified in your responses to BellSouth's First Set of Interrogatories.

Objection: AT&T specifically objects to this request to the extent that it is overly broad, unduly burdensome, irrelevant, oppressive and not reasonably calculated to lead to the discovery of admissible evidence pursuant to the *Proposed Procedural Order*.

POD 2: Produce every business case in your possession, custody of control that evaluates, discusses, analyzes or otherwise refers or relates to the offering of a qualifying service in the State of South Carolina.

Objection: AT&T objects to this request to the extent that it is not reasonably calculated to lead to the discovery of admissible evidence.

Pursuant to the *Proposed Procedural Order*, the Triennial Review Order, the Rules and Regulations of the Public Service Commission of South Carolina and Rules 26 and 34 of the South Carolina Rules of Civil Procedure, to the extent that this request seeks specific financial, business or proprietary information regarding AT&T's economic business model, AT&T objects to providing or producing any such information on the grounds that those request presume that the market entry analysis is contingent upon AT&T's economic business model instead of the hypothetical business model contemplated by the Triennial Review Order. The Triennial Review Order explicitly contemplates that in considering whether a competing carrier economically can compete in a given market without access to a particular unbundled network element, the Commission must consider the likely revenues and costs associated

[1] For the Commission's convenience, please see Attachment 1 to AT&T's Objections which sets forth the text of these relevant Paragraphs and Footnotes from the *TRO. Complete text of the Triennial Review Order is available @ www.fcc.gov.*

with the given market based on the *most efficient business model* for entry rather than to a *particular carrier's business model*. TRO at ¶326. In particular, the FCC stated:

> In considering whether a competing carrier could economically serve the market without access to the incumbent's switch, the state commission must also consider the likely revenues and costs associated with local exchange mass market service . . . The analysis must be based on the *most efficient business model* for entry rather than to any *particular carrier's business model.*

Id (emphasis added). Additionally, with respect to economic entry, in ¶517, the FCC stated that ". . . [t]he analysis must be based on the most efficient business model for entry rather than to any particular carrier's business model." Furthermore, in Footnote 1579 of Paragraph 517, the FCC clarified that ". . . [s]tate commissions should not focus on whether competitors operate under a cost disadvantage. State commissions should determine if entry is economic by conducting a business case analysis for an *efficient entry*." Id (emphasis added).

In addition to these statements, the FCC also made numerous other references to the operations and business plans of an efficient competitor, specifically rejecting a review of a particular carrier's business plans or related financial information. See, ¶84, Footnote 275 ("Once the UNE market is properly defined, impairment should be tested by asking whether *a reasonable efficient CLEC* retains the ability to compete even without access to the UNE.") (citing BellSouth Reply, Attachment 2, Declaration of Howard A. Shelanski at ¶2(emphasis added)). See also, TRO at ¶115; ¶469; ¶485, Footnote 1509; ¶517, Footnote 1579; ¶519, Footnote 1585; ¶520, Footnotes 1588 and 1589; ¶581, and Footnote 1788.[1]

Accordingly, the FCC's *TRO* specifically contemplates the consideration of financial and related information of an *efficient "model" competitor* and not that of AT&T or any other *particular competitor*. As a result, discovery of AT&T financial information or business plans will not lead to the discovery of admissible evidence in this proceeding.

POD 3: Produce all documents referring or relating to the average monthly revenues you receive from end user customers in South Carolina to whom you only provide qualifying service.

Objection: AT&T incorporates by this reference its Objection to POD No. 2 as if fully set forth.

POD 5: Produce all documents referring or relating to the average monthly revenues you receive from end user customers in South Carolina to whom you only provide non-qualifying service.

Objection: AT&T incorporates by this reference its Objection to POD No. 2 as if fully set forth.

POD 6: Produce all documents referring or relating to the average monthly revenues you receive from end user customers in South Carolina to whom you provide both qualifying and non-qualifying service.

Objection: AT&T incorporates by this reference its Objection to POD No. 2 as if fully set forth.

POD 9: Produce all documents referring or relating to the average acquisition cost for each class or type of end user customer served by Company, as requested in BellSouth's First Set of Interrogatories, No. 34.

Objection: AT&T incorporates by this reference its Objection to POD No. 2 as if fully set forth.

POD 10: Produce all documents referring or relating to the typical churn for each class or type of end user customer served by Company, as requested in BellSouth's First Set of Interrogatories, No. 35.

Objection: AT&T incorporates by this reference its Objection to POD No. 2 as if fully set forth.

POD 13: Produce all documents referring or relating to the cost of capital used by Company in evaluating whether to offer a qualifying service in a particular geographic market.

Objection: AT&T incorporates by this reference its Objection to POD No. 2 as if fully set forth.

POD 14: Produce all documents referring or relating to the time period used by Company in evaluating whether to offer a qualifying service in a particular geographic market (e.g., one year, five years, ten years or some other time horizon over which an offering of qualifying service(s) is evaluated)?

Objection: AT&T incorporates by this reference its Objection to POD No. 2 as if

fully set forth.

POD 15: Produce all documents referring or relating to your estimates of sales expense when evaluating whether to offer a qualifying service in a particular geographic market.

Objection: AT&T incorporates by this reference its Objection to POD No. 2 as if fully set forth.

POD 16: Produce all documents referring or relating to your estimates of general and administrative (G&A) expenses when evaluating whether to offer a qualifying service in a particular geographic market.

Objection: AT&T incorporates by this reference its Objection to POD No. 2 as if fully set forth.

Respectfully submitted, this the 1st day of December, 2003.

? Signature Not Verified John J. Pringle, Jr.

Digitally signed by John J. Pringle, Jr.
DN: cn=John J. Pringle, Jr., o=Ellis, Lawhorne and Sims, P.A., c=US
Date: 2003.12.01 15:26:28 -05'00'

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AT&T Communications of the Southern States, Inc.
AT&T Communications, Inc.
AT&T Communications of the Southern States, LLC

ATTACHMENT 1
"EFFICIENT" ENTRANT, COMPETITOR, BUSINESS PLAN
REFERENCES FROM TRIENNIAL REVIEW ORDER

¶ FROM ORDER	PAGE	TEXT FROM TRIENNIAL REVIEW ORDER
¶84	58	*Paragraph Reference to Footnote 275*: We find a requesting carrier to be impaired when lack of access to an incumbent LEC network element poses a barrier or barriers to entry, including operational and economic barriers, that are likely to make entry into a market uneconomic. That is, we ak whether all potential revenues from entering a market exceed the costs of entry, taking into consideration any countervailing advantages that a new entrant may have. As explained in detail below, this granular analysis is informed by consideration of the relevant barriers to entry, as well as a careful examination of the evidence, especially marketplace evidence showing whether entry has already occurred in particular geographic and customer markets without reliance on the incumbent LECs' networks but instead through self-provisioning or reliance on third-party sources. [275] (This ¶84 is included so that the context of FN 275 set forth below can be understood.)
FN 275	58	*See* Quest Comments at 11 ("But, of course, there is no universal, magic formula by which the Commission or anyone else can assign weights to various factors and arrive at the answer as to whether a particular element meets the 'impair' standard and should be unbundled. The basic question is whether CLECs can feasibly provide service and meaningfully compete without access to a particular type of facility."); BellSouth Reply at 12-13 ("Once the UNE market is properly defined, impairment should be tested by asking whether a **reasonable efficient CLEC** retains the ability to compete even without access to the UNE."); BellSouth Reply, Attach. 2, Declaration of Howard A. Shelanski, at para 2 (BOC Shelanski Reply Decl.) (also attached to SBC Reply and Verizon Reply) ("As an economic matter, impairment must at the very least mean that CLECs suffer some disadvantages relative to the ILEC that are sufficiently great that they could tip to the negative a rational CLEC's decision about whether or not to enter a local exchange market."); Letter from William P. Barr, Executive Vice President and General Counsel, Verizon, to Michael K. Powell, Chairman, FCC, CC Docket No. 01-338 at 3 (filed October 16, 2002) (Verizon Oct. 16, 2002 *Ex Parte* Letter) ("The key to the impairment analysis therefore is whether an entrant can, over time using its own facilities, profitably serve less than the entire market."; Letter from James C. Smith, Senior Vice President, SBC, to Michael K. Powell, Chairman, FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. 1 at 5 (SBC Jan. 14, 2003 *Ex Parte*

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		Letter).
¶115	79	*Impairment of Individual Requesting Carriers or Carriers Pursuing a Particular Business Strategy*. We will not, as some comments urge, evaluate whether individual requesting carriers or carriers that pursue a particular business strategy are impaired without access to UNEs. [395] We recognize that section 251(d)(2) refers to "*the* telecommunications carrier seeking access," but such a subjective, individualized approach could give some carriers access to elements but not others, and could reward those carriers that are less **efficient** or whose business plans simply call for greater reliance on UNEs. Providing UNEs to carriers with more limited business strategies would also disregard the availability of scale and scope economies gained by providing multiple services to large groups of customers. Thus, an entrant is not impaired if it could serve the market in an economic fashion using its own facilities, considering the range of customers that could reasonably be served and the services that could reasonably be provided with those facilities. Furthermore, a carrier- or business plan-specific approach would be administratively unworkable for regulators, incumbent LECs, and new entrants alike because it would require case-by-case determinations of impairment and continuous monitoring of the competitive situation. Finally, we do not read *Verizon* to state the contrary. While *Verizon* noted that smaller entrants may be in greater need of UNEs than larger carriers, the Supreme Court made those factual observations in the context of defending unbundling in general, not in the context of requiring any particular kind of impairment analysis. Thus, we agree with commenters that argue we cannot order unbundling merely because certain competitors or entrants with certain business plans are impaired. Rather, we will achieve needed granularity through consideration of other factors discussed below in Part V.B.2.
FN 395	79	*See, e.g.,* ALTS *et al*. Comments at 37-38; ACS Comments at 2-8 (Arguing that the Commission must determine whether each competitor – including small competitive LECs – needs access to UNEs); GCI Comments at 19-20; Z-Tel Comments at 22-24; BellSouth Reply at 13 (arguing that the Commission should require individual competitive LECs to demonstrate both that they are **"reasonably efficient"** and that alternative elements are not available to them); NewSouth Reply at 11; Z-Tel Reply at 22; BellSouth NERA Reply Decl. At para. 135; Z-Tel Ford Reply Decl. At paras. 24-25; ACS Jan. 6, 2003 *Ex Parte* Letter at 9-11 (urging Commission to find Alaskan competitor not impaired); Letter from Karen Brinkmann, Counsel for ITTA, to Marlene H. Dortch, Secretary FCC, CC Docket Nos. 01-338, 96-98, 98-147, Attach. At 1 (filed Jan. 27, 2003) (ITTA Jan. 27, 2003 *Ex Parte* Letter). *But see*, e.g., Quest Reply at 24-25. The Commission also disagreed with this approach in the *UNE Remand Order*. *See UNE Remand Order*, 15 FCC Rcd at 3725-27, paras. 53-54.

¶ FROM ORDER	PAGE	TEXT FROM TRIENNIAL REVIEW ORDER
¶469	293	While incumbent LECs reference the Commission's determination in multiple section 271 orders that BOCs provision hot cuts at a level of quality that offers **efficient competitors** a meaningful opportunity to compete,[1433] and argue that performance data show that current hot cut performance is satisfactory, even as the number of hot cuts has increased, we find that a number of hot cuts performed by BOCs in connection with the section 271 process is not comparable to the number that incumbent LECs would need to perform if unbundled switching were not available for all customer locations served with voice-grade loops. In the states where section 271 authorization has been granted, unbundled local circuit switching has been available and, accordingly, the BOCs' hot cut performance has generally been limited. Moreover, we find that the issue not how well the process works currently with limited hot cut volumes, rather the issue identified by the record identified is an inherent limitation in the number of manual cut overs that can be performed, which poses a barrier to entry that is likely to make entry into market uneconomic. Our finding is also corroborated by the comments of state commissions, more notably the New York Department, which concluded that "Verizon would need to dramatically increase the number of hot cut orders per month if UNE-P was terminated and CLEC customers were switched. The New York Department concluded that "it would take Verizon over 11 years to switch all the existing UNE-P customers to UNE-L." Indeed, the New York Department is currently examining ways to "migrat[e] large volumes of customers from Verizon's switches to CLEC's switches more efficiently. For those reasons, the Commission's prior findings in section 271 orders do not support a finding here that competitive carriers would not be impaired if they were required to rely on the hot cut process to serve all mass market customers.
FN 1433	293	*See, e.g., SWBT Texas 271 Order*, 15 FCC Rcd at 18490-93, paras. 268-73.
¶485	308	All of these studies, including those provided by the BOCs, strongly support the need for a more granular analysis of impairment. We have insufficient evidence in the record, however, to conduct this granular analysis. Such an analysis would require complete information about UNE rates, retail rates, other revenue opportunities, wire center sizes, equipment costs, and other overhead and marketing costs. While some of this information was submitted to us, or is available to us from other sources, the available data do not sufficiently facilitate a granular inquiry into precisely where entry is economic. That market-specific data is needed is indicated by the significant variation in the costs and revenues an **efficient entrant** is likely to face. For example, costs appear to vary significantly among locations and types of customers. The recurring and non-recurring charges for critical UNE inputs such as collocation, loops, and transport often vary substantially between states. Within a state UNE loop rates can vary tremendously among rate zones. Parties also agree

¶ FROM ORDER	PAGE	TEXT FROM TRIENNIAL REVIEW ORDER
		that the average cost per customer for collocation and equipment varies according to the number of customers served in a wire center, which is likely to depend on the size of the wire center and the likely market share of an **efficient competitor**. [1509] Some costs also vary according to the total size of the market served. The revenue estimates, which depend on customers' predicted expenditures on local voice service, were particularly controversial, and appear to have had a significant impact on the results. Retail rates can vary between states, by the type of customer, and within the state.
FN 1509	308	*See supra* Part VI.D.6.a.(i). (Unbundling Requirements for Individual Network Elements, Local Circuit Switching, Mass Market Customers, Impairment Caused by Incumbent LEC Hot Cut Process, Other Operational and Economic Impairment)
¶517	326	*Evidence of Whether Entry is Economic*. In considering whether a competing carrier could economically serve the market without access to the incumbent's switch, the state commission must also consider the likely revenues and costs associated with local exchange mass market service, as detailed below. Specifically, state commissions must determine whether entry is likely to be economic utilizing the most efficient network architecture available to an entrant. [1579] While most comments have focused on the UNE-L strategy, in which a requesting carrier combines the incumbent's loops and transport with its own switch, collocation and backhaul, state commissions must also consider whether new technologies provide a superior means of serving customers. The analysis must be based on the most **efficient** business model for entry rather than to any particular carrier's business model. Because this analysis involves comparing the potential revenues to the potential costs of entry, a state will necessarily be weighing advantages and disadvantages an entrant has in attempting to serve mass market customers. In judging whether entry is economic, states must also consider how sunk costs and competitive risks affect the likelihood of entry.
FN 1579	326	Consistent with the impairment standard we adopt today, state commissions must determine whether competitors are unable economically to serve the market. State commissions should not focus on whether competitors operate under a cost disadvantage. State commissions should determine if entry is economic by conducting a business case analysis for an **efficient entrant**. This involves estimating the likely potential revenues from entry, and subtracting out the likely costs (account for scale economies likely to be achieved). We note that for switching, at least, parties have submitted business case analyses to demonstrate the likely profitability of entry. *See* SBC Jan. 14, 2003 Unbundling Switching *Ex Parte* Letter; BellSouth Jan. 30, 2003 *Ex Parte* Letter; *see also* AT&T Jan. 17, 2003 *Ex Parte* Letter; WorldCom Jan. 8, 2003 Switching *Ex Parte* Letter.

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¶519	328	*Potential Revenues*. In determining the likely revenues available to a competing carrier in a given market, the state commission must consider *all* revenues that will derive from service to the mass market, based on the most **efficient** business model for entry. These potential revenues include those associated with providing voice services, including (but not restricted to) the basic retail price charged to the customer, the sale of vertical features, universal service payments, access charges, subscriber line charges, and, if any, toll revenues. The state must also consider the revenues a competitor is likely to obtain from using its facilities for providing data and long distance services and from business customers. [1585] Moreover, state commissions must consider the impact of implicit support flows and universal service subsidies on the revenue opportunities available to competitors. Consideration of potential revenues is consistent with our standard, as described in Part V above, with the guidance of the USTA decision.
FN 1585	329	This analysis will therefore take into account the scale and scope economies available to carriers using existing facilities to provide a variety of services to all customers that are likely to be served by an **efficient entrant**.
¶520	329	*Potential Costs*. Similarly, the state must consider all factors affecting the costs faced by a competitor providing local exchange service to the mass market. [1588] If the state commission determines that a UNE-L strategy is the most efficient means of serving the customer, these costs would likely include (among others): [1589] the cost of purchasing and installing a switch; the recurring and non-recurring charges paid to the incumbent LEC for loops, collocations, transport, hot cuts, OSS, signaling, and other services and equipment necessary to access the loop; the cost of collocation and equipment necessary to serve local exchange customers in a wire center, taking into consideration an entrant's likely market share, the scale economies inherent to serving a wire center, and the line density of the wire center; the cost of backhauling the local traffic to the competitor's switch, other costs associated with transferring the customer's service over to the competitor; the impact of churn on the cost of customer acquisitions; the cost of maintenance, operations, and other administrative activities; and the competitors' capital costs. State commissions should pay particular attention to the impact of migration and backhaul costs on competitor's ability to serve the market. We also note that parties to this proceeding have placed evidence in the record that economic impairment may be especially likely in wire centers below a specific line density. Before finding "no impairment" in a particular market, therefore, state commissions must consider whether entrants are likely to achieve sufficient volume of sales within each wire center, and in the entire area served by the entrant's switch, to obtain the scale economies needed to compete with the incumbent. (This ¶520 is included so that the context of FNs 1588 and 1589 set forth below can be understood.)

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FN 1588	329	… Similarly, Chairman Powell claims that applying in the switching section the impairment standard he proposed and the Commission unanimously adopted "has converted the impairment standard into a protector of individual business plans." *Chairman Powell Statement* at 11. The Order's general impairment section, which again was proposed by Chairman Powell and adopted unanimously, devotes an entire paragraph to explaining why our impairment analysis does not entail assessing individual business plans. That paragraph – entitled "Impairment of Individual Requesting Carriers or Carriers Pursuing a Particular Business Strategy" states that "[w]e will not, as some commenters urge, evaluate whether individual requesting carriers or carriers that pursue a particular business strategy are impaired without access to UNEs." *See supra* para. 115. Rather, we explain, "an entrant is not impaired if it could serve the market in an economic fashion using its own facilities, concerning the range of customers that could reasonably be served and the services that could reasonably be provided with those facilities." *Id*. This same analysis applies in the switching section no less than it does in the other sections of the Order. *See supra* note 1579 (stating that "[t]he business case analysis pertains to "an **efficient entrant**" and an estimation of the "likely potential revenues" and the "likely costs").
FN 1589	331	Note that these costs are likely to be affected by whether the entrant is using the same facilities to serve customers in other markets, thus taking advantage of available scale and scope economies. Thus, a portion of the costs may be paid for by revenues generated in other markets, and the full cost should not be attributed to serving just one market. For example, it would be unreasonable to assume that the cost of developing a complete OSS system would have to be recovered within a single granular market. Also, if it is determined that an **efficient entrant** could efficiently serve both enterprise and mass market customers with the same switch, collocation and transport facilities, then the state's analysis of mass market customers in a particular market should not assume that the entire cost of these facilities is borne by these customers.
¶581	366	We conclude that the Act does not prohibit the commingling of UNEs and wholesale services and that section 251(c)(3) of the Act grants authority for the Commission to adopt rules to permit the commingling of UNEs and combinations of UNEs with wholesale services, including interstate access services. An incumbent LEC's wholesale services constitute one technically feasible method to provide nondiscriminatory access to UNEs and UNE combinations. We agree with the Illinois Commission, the New York Department, and others that the commingling restriction puts competitive LECs at an unreasonable competitive disadvantage by forcing them either to operate two functionally equivalent networks – one network dedicated to local services and one dedicated to long distance and other services – or to choose between using UNEs and using more expensive special access services to serve their customers. [1788] Thus, we find that a restriction on commingling would

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		constitute an "unjust and unreasonable practice" under 201 of the Act, as well as an "undue and unreasonable prejudice or advantage" under section 202 of Act. Furthermore, we agree that restricting commingling would be inconsistent with the nondiscrimination requirement in section 251(c)(3). Incumbent LECs place no such restrictions on themselves for providing service to any customers by requiring, for example, two circuits to accommodate telecommunications traffic from a single customer or intermediate connections to network equipment in a collocation space. For these reasons we require incumbent LECs to effectuate commingling by modifying their interstate access service tariffs to expressly permit connections with UNEs and UNE combinations. (This ¶581 is included so that the context of FN 1788 set forth below can be understood.)
FN 1788	366	In the *Local Competition Order*, the Commission concluded that those "terms require incumbent LECs to provide unbundled elements under terms and conditions that would provide an **efficient competitor** with a meaningful opportunity to compete." 11 FCC Rcd at 15660, para. 315; *see UNE Remand*, 15 FCC Rcd at 3913-14, paras. 490-91…..